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Unauthorized Use of the CPA Title; State Legislation Research Study no. 4

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UNAUTHORIZED USE

of the

CPA TITLE

STATE LEGISLATION RESEARCH STUDY NO. 4

1956

Prepared by the Committee on State
Legislation

American Institute of Accountants
270 Madison Avenue
New York 16, New York

This is the fourth of a series of studies to be prepared by the state legislation committee of the American Institute of Accountants. It is submitted for the consideration of officers and legislation committees of state societies, and the extent of its use is to be determined by them.

This study was approved by the 1955-56 committee on state legislation comprising:

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UNAUTHORIZED USE OF THE CPA TITLE

This study analyzes the proposition that penalties for the unauthorized use of the title "Certified Public Accountant" or any similar designation should be written into state accountancy statutes. In the hope of being helpful to the state societies, the committee presents its reasoning and conclusions, but it feels that in the final analysis this question should be considered in the light of local conditions.

For the sake of brevity, only the term "certified public accountant" is used in this study. However, it should be understood that in states with two-class regulatory laws the title "public accountant" must also be guarded.

The Importance of Protecting the Title

It has been well said that a CPA does not have anything to sell but his professional ability. Since the knowledge he possesses is specialized, not everyone can tell a CPA from a less qualified practitioner. The public could be easily deceived by an unscrupulous accountant masquerading as a CPA. All such a man need do is preempt the CPA title and his disguise is complete.

"The standing of the designation 'certified public accountant' would deteriorate rapidly if unqualified practitioners were permitted to assume it with impunity, and the public would be deprived of protection to which the state legislatures have decided it is entitled."¹

Because of the difficulty of framing a definition of public

1. 72 Journal of Accountancy 293, October 1941 (Editorial).

accounting adequate for legislative purposes, and because of the necessity of protecting the constitutional right of all citizens to earn a livelihood, most states have not prohibited specific acts that might be covered by the phrase "public accounting." The laws of these states simply prevent anyone who has not received a certificate from holding himself out to the public as a certified public accountant. This means that the right to use this title is the only recognition many states give to a certified public accountant. In order to protect the public from incompetence this title, or the abbreviation "CPA", must be reserved to those qualified to bear it and forbidden to those not qualified.

The Institute's "Form of Regulatory Public Accounting Bill", approved by the committee on state legislation in 1945, attempted to cover the question of the unauthorized use of the CPA title. The phrasing of its provisions regarding the use of the title still repays careful study. Section 13 reads in part:

- (a) No person shall assume or use the title or designation "certified public accountant" or the abbreviation "C.P.A." or any other title, designation, words, letters abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant, unless such person has received a certificate as a certified public accountant, under Sec. 3 of this Act and holds a permit issued under Sec. 8 of this Act and not revoked or suspended...
- (e) No person...shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," or any other title or designation likely to be confused with "CPA"...

Section 16 of the form bill reads in part as follows:

Any person who violates any provision of Sec. 13 of this Act shall be guilty of a misde-

meanor, and upon conviction thereof, shall be subject to a fine of not more than five hundred dollars, or to imprisonment for not more than one year, or to both such fine and imprisonment...

What the States Have Done

Ten states have not yet declared the unauthorized use of the title a misdemeanor. They are Connecticut, Delaware, Louisiana, Maine, Massachusetts, New Hampshire, Ohio, Oregon, Vermont and Washington. But these states do prohibit the unauthorized use of the title, and they provide penalties for violations.

Most states have a fine or imprisonment for infractions and many have both. Only three--Minnesota, Nevada and Utah--do not prescribe any penalty for violation. Thirteen states make no provision for imprisonment of offenders: Arkansas, Georgia, Idaho, Indiana, Maine, North Carolina, Ohio, Oklahoma, Tennessee, Vermont, West Virginia, Wyoming and Alaska. All of the latter group prescribe fines, however.

About half the states have a minimum fine. These minimum fines range from \$10 to \$250. Nearly all have maximum fines, which range from \$100 to \$1,000. Louisiana and the Virgin Islands have fines without provision for a maximum.

Of those which prescribe imprisonment, minimum sentences range from one day to three months, and maximum from thirty days to one year. The New Jersey law shows no maximum term.

The laws of the following states and territories provide that each day or each offense shall be regarded as a separate offense: Arizona, Arkansas, Colorado, Louisiana, South Dakota, Wisconsin, Wyoming, Alaska and Hawaii. Rhode Island and the Virgin Islands prescribe heavier penalties for second offenders.

The unauthorized use of the title is proclaimed illegal in various ways. A few states--Idaho, Maryland, Nevada, New Mexico, North Carolina and Texas among them--and the territory of Hawaii use a catch-all method whereby any violation of any provision of the accountancy act is declared a misdemeanor. Kentucky and Connecticut, apparently following the sections of the form bill quoted above, list in one section all punishable acts and in another declare penalties for violations. Iowa provides punishments for those who practice accountancy or hold themselves out as practitioners of accountancy, without having complied with all the provisions of the law.

As an additional means of enforcing the provisions of an accountancy statute, a state may authorize the Board of Accountancy to apply to the appropriate court for an order enjoining persons from engaging in acts considered by the Board to be violations of the law. Such provisions are now in effect in the Commonwealth of Puerto Rico, the Territory of Hawaii and the eleven following states: California, Florida, Iowa, Kansas, Kentucky, North Carolina, Oregon, Pennsylvania, Tennessee, Utah and Washington.

Penalty Provision

The legal definition of the word "crime" must be kept in mind by those who would frame a provision relating to the commission of a crime. Such legal definition necessarily varies from state to state.

A factor common to most definitions of "crime" is the mention of punishment or penalty. In many states a crime may not exist unless a punishment for it is specified. In others a crime may not

exist unless it is unmistakably declared a crime--a misdemeanor or a felony.

Committee Recommendations

It has been established that a state may do whatever the general welfare requires to protect the public against ignorance, incompetence and fraud. So far as CPAs are concerned all states have taken steps intended thus to safeguard the public interest. Unfortunately, some of these intended safeguards have not accomplished their purpose. It is no protection to the public to enact an unenforceable law. Simply declaring that an unauthorized person may not call himself a CPA is no deterrent. He must be prevented from deceiving the public by having his action branded as a crime. And if penalties must be specified in order for it to be named a crime, then let them be specified.

As its major recommendation on this question, then, the committee on state legislation offers the following: Penalties for the unauthorized use of the title "Certified Public Accountant" or any similar designation should be written into state accountancy statutes.

Even aside from its legal implications, the spelling out of penalties is desirable on other grounds. Anyone who illegally uses the CPA title will have full knowledge of the consequences of his act. Since a violation here would be deliberate, possibly after a careful reading of the law, the appearance of the punishments in the text of the law may serve as a strong deterrent.

In addition the committee makes the following recommendations, which deal with related subjects:

1. Penalties should be severe enough to discourage unlawful use of the title but not so severe as to render the law unenforceable.
2. Penalties should be exacted for each offense.
3. Not only should the unauthorized use of the CPA title be prevented, but so should the use of other titles or initials likely to be confused with CPA.
4. Such a provision as the following from the AIA form bill (Section 16) may also be desirable: "Whenever the Board has reason to believe that any person is liable to punishment under this section it may certify the facts to the Attorney General of this State, who may, in his discretion, cause appropriate proceedings to be brought."
5. In addition to the penalties prescribed, provision for injunctive proceedings should be incorporated in the statute as an additional means of enforcing the provisions of the act. Such a provision as Section 15 of the form bill might be appropriate. This reads as follows: "Whenever in the judgment of the Board any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of Sec. 13 of this Act, the Board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the Board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond."
6. The drafting of a provision designed to prevent the unauthorized use of the CPA title should not be undertaken without obtaining the advice of an attorney.

4/24/56